

AMERICANS FOR PROSPERITY M I C H I G A N

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January 18, 2012

The Honorable Gail Haines
Chair Committee on Health Policy
& Health Policy Committee Members
Room N-892 Anderson Building
P.O. Box 30014
Lansing, MI 48909

Dear Chair Haines & Committee Members:

Americans for Prosperity (AFP) is a free market non-profit organization that is committed to educating and engaging grassroots citizen activists across the country to advocate for smaller government, lower taxes, and free enterprise. We believe that the free market is and always has been the true path to prosperity. On behalf of our almost 67,000 activists in Michigan, I am pleased to submit this written testimony opposing any attempt by the State of Michigan to create a "Health Exchange" as dictated by the Patient Protection and Affordable Care Act (PPACA).

Exchanges in their most basic form are a simple market mechanism allowing consumers to research, understand, and satisfy their health care needs. However, the Exchanges--as drafted within PPACA and substantiated by the Proposed Rules released in the Federal Register on July 15, 2011--are blunt instruments restricting consumer choice and limiting state flexibility.

The Proposed Rules from the Department of Health and Human Services (the Agency) try to provide the impression of state flexibility, while the Agency retains all important decisions regarding the Exchange and its processes. The Agency must provide initial approval of any Exchange, thus requiring compliance with standards and guidelines the Agency sets outside of Michigan's control. Secondly, the Agency establishes a "significant change" test that removes any discretionary power from the State to make changes as needed. "Significant changes" include such items as: Exchange governance structure, state laws and regulations and IT systems or functionality. The Agency gives States discretion regarding the Exchanges but only within the tight approval and operational paradigm laid out by the Agency. Even Michigan's best attempts to create a consumer-focused exchange will be thwarted by the Agency leaving Michigan as an administrator of policies formulated two thousand miles away.

Further, AFP objects to Agency attempts to create a centralized claims database. The aggregation of personal health data carries inherent security and privacy risks. The Agency also

suggests that the use of this data will extend beyond the stated purposes of risk adjustment leaving the door open to “other uses,” creating accountability, security, and transparency issues.

Finally, implementation of a state based healthcare exchange will raise taxes on businesses in Michigan. If a business does not provide “affordable” coverage to an employee, the employee can then purchase insurance through an Exchange and becomes eligible for federal tax subsidies. The employer is then subject to a \$3,000 fine for each employee that’s eligible for the subsidy. However, because lawmakers didn’t even read the bill before they passed it, only individuals purchasing from a state-created Exchange are eligible for a tax credit; federal Exchanges are not eligible. Therefore, setting up a state-based Exchange will subject businesses in Michigan to higher taxes.

AFP opposes any attempt by Michigan to create its own Exchange and instead urges the State to reject the Federal government’s attempt to make important decisions on behalf of Michigan and her citizens.

For a thorough explanation of AFP’s position on Exchange regulations visit our website at:

<http://www.americansforprosperity.org/081711-afp-comments-health-care-exchange-regulations>

Sincerely,



Scott Hagerstrom

State Director

Americans for Prosperity - Michigan

Americans for Prosperity (AFP) is a nationwide organization of citizen-leaders committed to advancing every individual’s right to economic freedom and opportunity. AFP believes reducing the size and intrusiveness of government is the best way to promote individual productivity and prosperity for all Americans. AFP educates and engages citizens to support restraining state and federal government growth and returning government to its constitutional limits. AFP is more than 1.8 million activists strong, with activists in all 50 states. AFP has 31 state chapters and affiliates. More than 85,000 Americans in all 50 states have made a financial contribution to AFP or AFP Foundation. For more information, visit www.americansforprosperity.org. Americans for Prosperity does not support or oppose candidates for public office.

AMERICANS FOR PROSPERITY®

ObamaCare Health Care Exchange Regulations

September 2011

In principle, conservatives could support health insurance exchanges. They harness the power of free market competition, transparency and value comparison to drive innovation, increase choice, and reduce costs. However, when a health plan's participation in the exchange is conditioned on page-after-page of federal mandates and restrictions, exchanges can also be used as a tool to expand bureaucratic control and micromanage the market. That's exactly what President Obama and HHS Secretary Kathleen Sebelius are trying to do with the new exchanges.

Setting up an Exchange will raise taxes on business in your state.

Nancy Pelosi famously said "we have to pass the bill so you can find out what's in it" and we have. In a rush to pass the bill and ignore the landmark special Senate election in Massachusetts lawmakers made a huge error writing the bill that will raise taxes on businesses in your state if you set up an Exchange. If a business does not provide "affordable" coverage to an employee, the employee can then purchase insurance through an Exchange and becomes eligible for federal tax subsidies. The employer is then subject to a \$3,000 fine for each employee that's eligible for the subsidy. However, because lawmakers didn't even read the bill before they passed it, only individuals purchasing from a state-created Exchange are eligible for a tax credit; federal Exchanges are not eligible. Therefore, setting up a state-based Exchange will subject businesses in your state to higher taxes.

This law is bad policy; conservatives shouldn't take political accountability for progressives' central planning.

Burdened by mandates, restrictions and the problems of community rating and guaranteed issue, the Exchanges will fail to provide accessible and affordable health care insurance. In fact, a recent study commissioned by the state of Wisconsin found that individual market premiums will increase by an average 30% under the new law's provisions. A similar study in Ohio found premiums would increase 55 to 85%. When these Exchange fail and individuals are unable to buy affordable insurance, they will blame the politicians who created the. Liberals passed the law, let them take the accountability. Don't bail them out.

Federal Control of State Exchanges: The President knows the country realizes his plan is a federal health care takeover. So in the first proposed regulations his bureaucrats used language that made it appear they were giving states flexibility to set up their own exchanges. Remember the health care market is far too complex for D.C. to run; they need the states to implement their scheme. Giving the appearance of flexibility is one way to convince states to do it. However, the proposed regulations direct that any "significant change" states want to make will require HHS approval. These changes could be as small as exchange governance structure, state laws or regulations, IT systems or functionality, or the qualified health plan certification process. States will be constantly asking permission to run their own exchanges; not a lot of real flexibility.

Centralized Database Risks Security of Personal Data: The proposed regulations also seek to establish a centralized claims database for the purpose of calculating risk. Insurers would be required to submit patients' personal claims data to a huge federal database for the purposes of calculating "risk scores" and quality reporting – an enormous privacy concern. Do you want the federal government to have access to information about all of your health care decisions?

No Hint of Qualified Plans: "If you like your plan, you can keep it," the President constantly promised during the health care debate. One of the more important elements of an exchange is which insurance plans will be allowed to participate. What plans qualify? This first regulation is entirely silent on what a qualified plan will look like. Care providers, insurers and patients are still waiting to learn if the President will allow us to keep the health care we have and like.

Short Timetable Threatens Federal Takeover: Maybe the worst aspect of these rules is the incredibly short time frame it gives states to get their exchanges up and running. States must receive "approval or conditional approval" from HHS by January 1, 2013 in order to avoid the federal government taking over the state's exchange. However, due to various HHS review deadlines, states will probably need to have their plans submitted for federal signoff by July, 2012. With HHS due to release several more regulations before the states will have a clear picture of what the exchanges will need to look like to get HHS approval, states will likely only have a few months between when the final regulations are issued and when their plans are due.


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Another Fatal Flaw In ObamaCare -- Could It Sink the Law?

By Phil Kerpen

Published September 08, 2011 | FoxNews.com

The ObamaCare bill that was passed last year was never written to become a law. It was a discussion draft. It was meant to be simply an intermediate step in the legislative sausage factory. But when the Democrats conspired to bypass Scott Brown's election, we got stuck with it.

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Now we're dealing with the consequences.

Any chance that Democrats had of legitimately passing their bill died on January 19, 2010 when Massachusetts' own Scott Brown was elected to the U.S. Senate promising to be the key vote -- number 41 -- to sustain a filibuster and block the bill.

That day, no lesser a left-wing icon than Rep. Barney Frank said: "I feel strongly that the Democratic majority in Congress must respect the process and make no effort to bypass the electoral results."

That didn't last long. The union front-group Families USA -- heavily funded by pharmaceutical interests -- came forward with scheme to precisely bypass the electoral results. It involved enacting the Senate-passed discussion draft from the previous December into law as is, with a follow-on reconciliation bill to add significant additional tax hikes, make some tweaks that unions wanted to see, and take over the student loan industry.

Of course, the discussion draft was packed full of the ordinary mistakes, errors, contradictions, and ambiguities that you would expect in an unfinished product. Now it's all been dumped in the hands of regulators who have astonishing, unprecedented power to interpret what it all means -- often asserting that it means the plain opposite of what it actually says.

Since then we've seen a string of questionable guidance documents and proposed rulemakings, in a massive expansion of bureaucratic discretion struggling to make sense of a nonsensical situation, the result of a discussion draft being passed into law.

For example, right after the bill was passed HHS Secretary Kathleen Sebelius sent a letter demanding insurance companies end pre-existing condition exclusions for children immediately -- even though the law didn't actually require them to.

Now comes the biggest glitch yet discovered. Perhaps big enough to collapse the whole edifice.

As Investors Business Daily aka IBD reports today, the massive taxpayer subsidies at the heart of ObamaCare may not cover nearly as many recipients as was hoped. Specifically:

"Section 1311 of ObamaCare instructs state governments to set up an exchange. If a state refuses, Section 1321 lets the federal government establish an exchange in the state.

Yet ObamaCare states that the tax credit is available to people who are enrolled in an 'an exchange established by the state under (Section) 1311.' It makes no mention of people enrolled in federal exchanges being eligible for the tax credit."

Of course, Obama's IRS can try to ignore the law, issue another dubious guidance document, and attempt to grant credits to participants in a federally-run exchange. But that would clearly violate the letter of the law, and if they try it they should lose in court.

Even before this glitch was discovered, it made sense for states to refuse to set up exchanges, which are tightly controlled by HHS under extremely restrictive rules. Now states can strike a body blow to ObamaCare by refusing to establish exchanges. This is just one more reason this discussion-draft-turned-law version of ObamaCare is terminally flawed and must be repealed.

Phil Kerpen is vice president for policy at Americans for Prosperity and the author of the forthcoming book, "Democracy Denied: How Obama is Ignoring You and Bypassing Congress to Radically Transform America -- and How to Stop Him" (BenBella Books, October 2011).

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